



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2450

Introduced 2/19/2009, by Rep. David E. Miller

SYNOPSIS AS INTRODUCED:

225 ILCS 60/33.1 new
725 ILCS 150/3

from Ch. 56 1/2, par. 1673

Amends the Medical Practice Act of 1987. Provides it is unlawful for any person to knowingly manufacture or deliver, or possess with intent to manufacture or deliver a legend drug of 6 or more pills, tablets, capsules, caplets, or 30 ml or more of a liquid medication who is not licensed under this Act or another Act of the State to practice, prescribe, or dispense legend drugs in all of its branches. Provides certain criminal penalties, fines, and forfeiture provisions for violations of the Section. Defines "legend drug" as a drug limited by the Federal Food, Drug and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is (1) habit-forming; (2) toxic or having potential for harm; or (3) limited in use by the new drug application for the drug to use only under a medical practitioner's supervision. Defines "medical practitioner" as any person licensed to practice medicine in all its branches in the State. Amends the Drug Asset Forfeiture Procedure Act. Provides that the provisions of the Act are applicable to all property forfeitable under the Medical Practice Act of 1987. Effective immediately.

LRB096 04587 ASK 14643 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning professional regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Medical Practice Act of 1987 is amended by
5 adding Section 33.1 as follows:

6 (225 ILCS 60/33.1 new)

7 Sec. 33.1. Legend drug prohibition.

8 (a) It is unlawful for any person to knowingly manufacture
9 or deliver, or possess with intent to manufacture or deliver, a
10 legend drug of 6 or more pills, tablets, capsules, caplets, or
11 30 ml or more of a liquid medication who is not licensed under
12 this Act or another Act of this State to practice, prescribe,
13 or dispense legend drugs in all of its branches. Any person who
14 violates this section is guilty of a Class 3 felony. The fine
15 shall not exceed \$100,000.

16 A person convicted of a second or subsequent violation of
17 this Section is guilty of a Class 1 felony, the fine for which
18 shall not exceed \$250,000.

19 (b) The following are subject to forfeiture:

20 (1) all substances that have been manufactured,
21 distributed, dispensed, or possessed in violation of this
22 Act;

23 (2) all raw materials, products, and equipment of any

1 kind which are used, or intended for use in manufacturing,
2 distributing, dispensing, administering, or possessing any
3 substance in violation of this Act;

4 (3) all conveyances, including aircraft, vehicles, or
5 vessels, which are used, or intended for use, to transport,
6 or in any manner to facilitate the transportation, sale,
7 receipt, possession, or concealment of property described
8 in items (1) and (2) of this subsection (b), but:

9 (A) no conveyance used by any person as a common
10 carrier in the transaction of business as a common
11 carrier is subject to forfeiture under this Section
12 unless it appears that the owner or other person in
13 charge of the conveyance is a consenting party or privy
14 to a violation of this Act;

15 (B) no conveyance is subject to forfeiture under
16 this Section by reason of any act or omission which the
17 owner proves to have been committed or omitted without
18 his knowledge or consent; and

19 (C) a forfeiture of a conveyance encumbered by a
20 bona fide security interest is subject to the interest
21 of the secured party if he neither had knowledge of nor
22 consented to the act or omission;

23 (4) all money, things of value, books, records, and
24 research products and materials including formulas,
25 microfilm, tapes, and data that are used, or intended to be
26 used in violation of this Act;

1 (5) everything of value furnished, or intended to be
2 furnished, in exchange for a substance in violation of this
3 Act, all proceeds traceable to such an exchange, and all
4 moneys, negotiable instruments, and securities used, or
5 intended to be used, to commit or in any manner to
6 facilitate any violation of this Act; and

7 (6) all real property, including any right, title, and
8 interest, including, but not limited to, any leasehold
9 interest or the beneficial interest in a land trust, in the
10 whole of any lot or tract of land and any appurtenances or
11 improvements, which is used or intended to be used, in any
12 manner or part, to commit, or in any manner to facilitate
13 the commission of, any violation or act that constitutes a
14 violation of Section 33.1 of this Act or that is the
15 proceeds of any violation or act that constitutes a
16 violation of Section 33.1 of this Act.

17 (c) Property subject to forfeiture under this Act may be
18 seized by the Secretary or any peace officer upon process or
19 seizure warrant issued by any court having jurisdiction over
20 the property. Seizure by the Secretary or any peace officer
21 without process may be made:

22 (1) if the seizure is incident to inspection under an
23 administrative inspection warrant;

24 (2) if the property subject to seizure has been the
25 subject of a prior judgment in favor of the State in a
26 criminal proceeding, or in an injunction or forfeiture

1 proceeding based upon this Act or the Drug Asset Forfeiture
2 Procedure Act;

3 (3) if there is probable cause to believe that the
4 property is directly or indirectly dangerous to health or
5 safety;

6 (4) if there is probable cause to believe that the
7 property is subject to forfeiture under this Act and the
8 property is seized under circumstances in which a
9 warrantless seizure or arrest would be reasonable; or

10 (5) in accordance with the Code of Criminal Procedure
11 of 1963.

12 (d) In the event of seizure pursuant to subsection (b) of
13 this Section, forfeiture proceedings shall be instituted in
14 accordance with the Drug Asset Forfeiture Procedure Act.

15 (e) Property taken or detained under this Section shall not
16 be subject to replevin, but is deemed to be in the custody of
17 the Secretary subject only to the order and judgments of the
18 circuit court having jurisdiction over the forfeiture
19 proceedings and the decisions of the State's Attorney under the
20 Drug Asset Forfeiture Procedure Act. If property is seized
21 under this Act, then the seizing agency shall promptly conduct
22 an inventory of the seized property and estimate the property's
23 value, and shall forward a copy of the inventory of seized
24 property and the estimate of the property's value to the
25 Secretary. Upon receiving notice of seizure, the Secretary may:

26 (1) place the property under seal;

1 (2) remove the property to a place designated by the
2 Secretary;

3 (3) keep the property in the possession of the seizing
4 agency;

5 (4) remove the property to a storage area for
6 safekeeping or, if the property is a negotiable instrument
7 or money and is not needed for evidentiary purposes,
8 deposit it in an interest bearing account;

9 (5) place the property under constructive seizure by
10 posting notice of pending forfeiture on it, by giving
11 notice of pending forfeiture to its owners and interest
12 holders, or by filing notice of pending forfeiture in any
13 appropriate public record relating to the property; or

14 (6) provide for another agency or custodian, including
15 an owner, secured party, or lienholder, to take custody of
16 the property upon the terms and conditions set by the
17 Secretary.

18 (f) If the Department suspends or revokes a registration,
19 all legend drugs owned or possessed by the registrant at the
20 time of suspension or the effective date of the revocation
21 order may be placed under seal. No disposition may be made of
22 substances under seal until the time for taking an appeal has
23 elapsed or until all appeals have been concluded unless a
24 court, upon application therefor, orders the sale of perishable
25 substances and the deposit of the proceeds of the sale with the
26 court. Upon a revocation rule becoming final, all substances

1 may be forfeited to the Department.

2 (g) If property is forfeited under this Act, then the
3 Secretary must sell all such property unless such property is
4 required by law to be destroyed or is harmful to the public,
5 and shall distribute the proceeds of the sale, together with
6 any moneys forfeited or seized, in accordance with subsection
7 (h) of this Section. Upon the application of the seizing agency
8 or prosecutor who was responsible for the investigation, arrest
9 or arrests, and prosecution that led to the forfeiture, the
10 Secretary may return any item of forfeited property to the
11 seizing agency or prosecutor for official use in the
12 enforcement of laws if the agency or prosecutor can demonstrate
13 that the item requested would be useful to the agency or
14 prosecutor in their enforcement efforts. If any forfeited
15 conveyance, including an aircraft, vehicle, or vessel, is
16 returned to the seizing agency or prosecutor, then the
17 conveyance may be used immediately in the enforcement of the
18 criminal laws of the State. Upon disposal, all proceeds from
19 the sale of the conveyance must be used for drug enforcement
20 purposes. If any real property returned to the seizing agency
21 is sold by the agency or its unit of government, then the
22 proceeds of the sale shall be delivered to the Secretary and
23 distributed in accordance with subsection (h) of this Section.

24 (h) All moneys and the sale proceeds of all other property
25 forfeited and seized under this Act shall be distributed as
26 follows:

1 (1) 65% shall be distributed to the metropolitan
2 enforcement group, local, municipal, county, or State law
3 enforcement agency or agencies which conducted or
4 participated in the investigation resulting in the
5 forfeiture. The distribution shall bear a reasonable
6 relationship to the degree of direct participation of the
7 law enforcement agency in the effort resulting in the
8 forfeiture, taking into account the total value of the
9 property forfeited and the total law enforcement effort
10 with respect to the violation of the law upon which the
11 forfeiture is based. Amounts distributed to the agency or
12 agencies shall be used for the enforcement of laws.

13 (2) 12.5% shall be distributed to the Office of the
14 State's Attorney of the county in which the prosecution
15 resulting in the forfeiture was instituted, deposited in a
16 special fund in the county treasury and appropriated to the
17 State's Attorney for use in the enforcement of laws. In
18 counties over 3,000,000 population, 25% will be
19 distributed to the Office of the State's Attorney for use
20 in the enforcement of laws governing cannabis and
21 controlled substances. If the prosecution is undertaken
22 solely by the Attorney General, the portion provided
23 hereunder shall be distributed to the Attorney General for
24 use in the enforcement of laws.

25 (3) 12.5% shall be distributed to the Office of the
26 State's Attorneys Appellate Prosecutor and deposited in a

1 separate fund of that office to be used for additional
2 expenses incurred in the investigation, prosecution and
3 appeal of cases. The Office of the State's Attorneys
4 Appellate Prosecutor shall not receive distribution from
5 cases brought in counties with over 3,000,000 population.

6 (4) 10% shall be retained by the Department of State
7 Police for expenses related to the administration and sale
8 of seized and forfeited property.

9 (i) In this Section:

10 "Legend drug" means a drug limited by the Federal Food,
11 Drug and Cosmetic Act to being dispensed by or upon a medical
12 practitioner's prescription because the drug is:

13 (1) habit forming;

14 (2) toxic or having potential for harm; or

15 (3) limited in use by the new drug application for the
16 drug to use only under a medical practitioner's
17 supervision.

18 "Medical practitioner" means any person licensed to
19 practice medicine in all its branches in the State.

20 "Deliver" or "delivery" means the actual, constructive, or
21 attempted transfer of possession of a legend drug, with or
22 without consideration, whether or not there is an agency
23 relationship.

24 "Manufacture" means the production, preparation,
25 propagation, compounding, conversion, or processing of a
26 legend drug, either directly or indirectly, by extraction from

1 substances of natural origin, or independently by means of
2 chemical synthesis, or by a combination of extraction and
3 chemical synthesis, and includes any packaging or repackaging
4 of the substance or labeling of its container. "Manufacture"
5 does not include:

6 (1) by an ultimate user, the preparation or compounding
7 of a legend drug for his own use; or

8 (2) by a medical practitioner, or his authorized agent
9 under his supervision, the preparation, compounding,
10 packaging, or labeling of a legend drug:

11 (A) as an incident to his administering or
12 dispensing of a legend drug in the course of his
13 professional practice; or

14 (B) as an incident to lawful research, teaching, or
15 chemical analysis and not for sale.

16 "Prescription" means a lawful written, facsimile, or
17 verbal order of a "medical practitioner" as defined under the
18 laws of the State.

19 Section 10. The Drug Asset Forfeiture Procedure Act is
20 amended by changing Section 3 as follows:

21 (725 ILCS 150/3) (from Ch. 56 1/2, par. 1673)

22 Sec. 3. Applicability. The provisions of this Act are
23 applicable to all property forfeitable under the Illinois
24 Controlled Substances Act, the Cannabis Control Act, the

1 Medical Practice Act of 1987, or the Methamphetamine Control
2 and Community Protection Act.

3 (Source: P.A. 94-556, eff. 9-11-05.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.